

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC, for)
a certificate of public good, pursuant to 30 V.S.A. Section)
248, authorizing the construction and operation of a 5-)
wind turbine electric generation facility, with associated)
electric and interconnection facilities, on Georgia)
Mountain in the Towns of Milton and Georgia, Vermont,)
to be known as the "Georgia Mountain Community Wind)
Project")

Order entered: 2/11/2011

PROTECTIVE ORDER RE PREFILED EVIDENCE

I. INTRODUCTION

On November 29, 2010, Georgia Mountain Community Wind, LLC ("GMCW"), filed a Motion for Confidential Treatment of Prefiled Evidence concerning Exh. Petitioner.Supp.JLZ-3 (the "Mechanical Loads Analysis"). GMCW submitted an averment to support its request for confidentiality.

No party filed comments on GMCW's motion.

In this Order, we conclude that certain aspects of the Mechanical Loads Analysis should be accorded confidential treatment; however, we also conclude that GMCW has not provided a sufficient showing as to why the report, in its entirety, should be kept confidential.

II. DISCUSSION

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately

places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.² However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?³

In the present case, GMCW asks that a Mechanical Loads Analysis prepared by GE Energy be kept sealed.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that GMCW has made a *prima facie* showing that confidential treatment is warranted for certain information contained in the Mechanical Loads Analysis; however, there has not been a sufficient showing that the entire report should be kept confidential.

We also conclude that one of the rationales asserted by GMCW to support confidential treatment of the Mechanical Loads Analysis is misguided. GMCW's averment includes the following statement as one of the reasons for confidential treatment of the Mechanical Loads Analysis: "The GE Mechanical Load Analysis was provided to Petitioner with the requirement that this information would remain confidential." We do not accept that parties can arrange merely through their own agreement to shield details of information from public view,

1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, ("Entergy Docket"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

particularly when a party wishes to use such information to advance its case. Vermont law creates a strong presumption that public records, such as the testimony and exhibits in this proceeding, are to be available for public inspection.⁴ In our determination of whether to grant confidential treatment to the Mechanical Loads Analysis we have given no weight to the argument that the report was provided on the basis that it not be made public, and instead have independently judged the merits of the request for confidentiality.

GMCW contends that the Mechanical Loads Analysis should be kept confidential because: "The design analysis is both market sensitive and a trade secret because knowledge of component parts and the operational specifications of the GE wind turbines has economic value and is not generally known, and would provide competitors with a competitive advantage." There is sufficient justification to keep confidential certain results of the analysis, as well as the inputs into the analysis. However, it is unclear whether the study methodology itself constitutes a trade secret that is used uniquely by GE Energy or whether the methodology is common industry practice. For such information, we require GMCW to submit a more detailed averment that explains why this information should be kept confidential. In addition, there are several portions of the report that discuss, in general terms, the results of the report, as well as certain assumptions used in the report. There is insufficient justification as to why the information in this latter category should be kept confidential, and we require GMCW to submit a public version of the Mechanical Loads Analysis that does not redact this information.

A. Redactions to be Unsealed

We conclude that, for the reasons stated above, the following sections of the Mechanical Load Analysis should not remain confidential, and as a result shall be unsealed and made part of the public record:

1. Executive Summary
2. Introduction
3. Project Information

4. 1 V.S.A. § 315.

3.1. Wind Rose and Wind Speed Distribution

3.2. Turbulence Intensity (excluding figure 3)

3.3. Flow Inclination angle

3.4. Extreme Wind Conditions (excluding the V_{ref} and V_{e50} values identified in the last sentence of the section)

3.5. Wind Shear Profile (excluding the worst-case vertical wind shear exponent across the rotor identified in the third sentence of the section)

3.6. Air Density

3.7. Wind Farm Layout

5. Conclusions

Disclaimer

References

B. Information for which GMCW must file additional justification

We conclude that, for the reasons stated above, GMCW must provide additional information to justify why the following sections of the Mechanical Load Analysis should be kept confidential.

4. Site Specific Assessment

4.1. Fatigue Loads Analysis (excluding Table 1, which shall remain confidential)

4.2. Extreme Loads Analysis (excluding Table 2, which shall remain confidential)

4.3 Turbine Suitability

GMCW's averment states that the Mechanical Loads Analysis should be treated as confidential "for the life of the project unless it otherwise becomes public at some earlier time." GMCW's supplemental averment must provide a justification as to why the information should be treated as confidential for that duration of time.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public

(even during the course of this proceeding), particularly testimony and exhibits. We expect GMCW to do the same here.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Mechanical Load Analysis Report submitted by GMCW on December 23, 2010, shall be treated in this proceeding as follows:

1. GMCW shall file, within ten calendar days of the date of this Order, a revised redacted versions of the Mechanical Loads Analysis that remove from seal the portions of the report identified in Section II.A, above.

2. GMCW shall file, within ten calendar days of the date of this Order, a supplemental averment that provides additional justification for the proposed redactions identified in Section II.B, above, as well as an explanation as to why the material should be treated as confidential until the life of the project. After receiving the supplemental averments, the Board will determine whether GMCW has made the requisite *prima facie* showings for confidentiality. If GMCW chooses not to file a supplemental averment for any particular redaction, GMCW shall file a new public version of the subject testimony or exhibit with that redaction unsealed, within ten calendar days of the date of this Order.

3. Other than the portions identified in Sections II.A and II.b, above, the Mechanical Loads Analysis shall be treated as confidential information. The portions of the Mechanical Loads Analysis that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

4. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of January 13, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

5. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

6. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition to this Order.

Dated at Montpelier, Vermont, this 11th day of February, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: February 11, 2011

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)